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April 10, 2019

By U.S. Mail and Email

The Honorable Elijah E. Cummings
Chairman, Committee on Oversight and Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515
susanne.grooms@mail.house.gov

RE: Carl Kline

Dear Chairman Cummings:

I regret the circumstances that have resulted in the Committee on Oversight and Reform electing to subpoena Carl Kline, despite our legitimate offer to have him appear voluntarily. We will be there for the deposition scheduled on April 23rd either way and as directed.

Anticipating conflicts, however, please note that while Mr. Kline stands ready to testify truthfully, it is the White House Counsel's Office (not Mr. Kline) that will determine whether testimony about certain topics will infringe on executive branch or other privileges that may be asserted. By corollary, it is not Mr. Kline's role to comment on the strength of any such assertions, but to comply with instructions from the White House regarding appropriate scope of testimony. I fully understand you may not see things the same way, but it is my sincere hope that we can avoid a harmful and costly inter-branch dispute that has a 40-plus year public servant and military veteran hanging in the balance.

To avert such a dispute, I write to propose the Committee consider withdrawing its subpoena to Mr. Kline, in substitution of a subpoena for White House records the Committee wishes to have Mr. Kline testify about. By proceeding in this manner, the scope of Mr. Kline's permissible testimony can be negotiated (or litigated) in advance, without ever putting this career civil servant to time and expense. When the dispute is resolved, Mr. Kline can voluntarily testify. Proceeding otherwise, in my view, would unfairly drag a career civil servant into a dispute he has no control over, cannot take a position in, and cannot provide substantive solutions or responses to, all while still having to incur legal fees.

However, if the Committee insists in proceeding with the subpoenaed testimony, I must prepare Mr. Kline without knowing your questions or the permitted areas of testimony. Thus, I must prepare him to respond to what I presume will inevitably be direct and implied accusations from this Committee that his conduct assessing security clearance issues—a nonpolitical job

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responsibility he has carefully performed for decades—was either improper or inconsistent (or both) with longstanding bipartisan practice.

To address such criticisms, I respectfully request that the Committee obtain White House records related to the security clearance practices for senior level advisors in 2009-2010, the analogous time period of the last transition of White House personnel to the hands of a new political party. This will allow me (and Committee staff) to answer whether procedures have actually changed, and also assess how controversial or high-profile staffers were treated at that time in comparison to now. Like today, you will recall political opponents of the then Obama administration raised questions about its White House security clearance decisions based on personal conduct, foreign contacts, and other leaked information. As such, I ask the Committee issue a subpoena to the appropriate records custodian, seeking documents related to the security-clearance process, including SF-86s, for former White House advisors Ben Rhodes, Valerie Jarrett, and Jay Carney, and informal unpaid advisor Al Sharpton. These files will provide an apples-to-apples comparison to best evaluate claims concerning Mr. Kline's process for high-profile security-clearance candidates (if any) and whether his own conduct was somehow unusual (if at all).

I acknowledge these former White House advisors might have sincere, privacy concerns about their personal information being subpoenaed. However, congressional oversight of the White House security clearance process must necessarily override such concerns, as this Committee now appears to hold. Of course, procuring such records might also have the salutary effect of elevating the public's trust and confidence that this body is indeed more concerned with national security than scoring political points. This would be an important message to send at this time when many communities, as you know, are openly questioning whether the current climate of political divisiveness is too destructive, particularly when Congress has no legislative power to regulate the plenary White House security clearance decisions in any case. If the Committee elects to withdraw the subpoena as proposed above, our request obviously becomes moot; this would be our strong preference. But if not, I must request that the Committee provide me and my client access to files from the previous administration to evaluate the claims, processes, and procedures, and whether there have been any changes, good or bad. By copy of this letter, I am requesting White House Counsel to consider the same. If privacy concerns remain an issue, possibly a random selection of prior administration files might suffice.

Thank you for your consideration, and I look forward to working with you and your staff.

Sincerely,
McGlinchey Stafford



Robert N. Driscoll
Counsel for Carl Kline

cc: The Hon. James D. Jordan, Ranking Member (*by email at* stephen.castor@mail.house.gov)
Office of White House Counsel
Carl Kline